

Regulation 1535

FINAL STATEMENT OF REASONS Overview/Non-Controlling Summary

UPDATE

Regulation 1535, *Racehorse Breeding Stock*, is promulgated to interpret and explain the application of tax on the sale and use of racehorse breeding stock to and by qualified persons. It explains how sales and use tax applies to such transactions.

SPECIFIC PURPOSE

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code Section 6358.5 as it applies to such sales. This regulation is necessary to provide guidance to the taxpayers that engage in such transactions.

Factual Basis

Current law, Revenue and Taxation Code section 6358(b), provides an exemption from tax for sales and purchases of animals the products of which are ordinarily for human consumption or for resale. Sales and purchases of racehorse breeding stock are subject to tax.

Proposed Regulation 1535, Race Horse Breeding Stock, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6358.5, which provides and exemption for state, but not from local or district, sales and use tax for sales and purchases of race horse breeding stock. The proposed regulation provides definitions of terms used in the statute and clarifies the application of the partial exemption to the sale and use of racehorse breeding stock. The proposed regulation has an operative date of September 1, 2001.

Subdivision (a) explains the general nature of the partial exemption provided by AB 426 and the history of state tax rate increases and decreases in the last two years due to the operation of Revenue and Taxation Code sections 6051.4 and 6201.4. Subdivision (b) provides definitions of terms used in the statute that are essential to administering the provisions of the partial exemption as set forth in Revenue and Taxation Code section 6358.5. Subdivisions (c) through (e) were derived from equivalent language in Regulations 1533.1, 1533.2, and 1534 that implement other partial exemptions enacted as part of AB 426, explain the use of partial exemption certificates and explain how refunds for payment of tax on transactions subject to the partial exemption may be claimed. Subdivisions (f) and (g) make specific the provisions of Revenue and Taxation Code section 6421

to provide that if the property is used in a manner not qualifying for the partial exemption the purchaser is liable for the payment of sales tax just as if he were a retailer making the sale. Subdivision (h) provides that leases of tangible personal property which are classified as “continuing sales” and “continuing purchases” qualify for the racehorse breeding stock partial exemption subject to all the conditions and limitations set forth in the regulation. Subdivision (i) applies to the partial exemption the provisions of Revenue and Taxation Code section 7053, which requires that adequate and complete records must be maintained by the qualified person as evidence that the racehorse breeding stock was capable of reproduction and purchased by the qualified person solely for breeding purposes. Subdivision (j) recites the statutory operative date of September 1, 2001.

LOCAL MANDATE DETERMINATION

The Board of Equalization has determined that the regulation does not impose a mandate on local agencies or school districts.

RESPONSE TO PUBLIC COMMENT

On September 11, 2002, the Board held a public hearing on Proposed Regulation 1535. No one appeared at the public hearing and no written comments were received.

SMALL BUSINESS IMPACT

The Board of Equalization has determined that the proposed regulation will not have a significant adverse economic impact on small businesses.

ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES NOT INCLUDING SMALL BUSINESS

No impact.

FEDERAL REGULATIONS

Proposed Regulation 1535 has no comparable federal regulations.

ALTERNATIVES CONSIDERED

By its motion, the Board determined no alternative to promulgating the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.